Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

Its Attorneys:

James W. Olson
Indra S. Chalk
Jeffrey S. Lanning
Robin E. Tuttle

607 14th Street, NW, Suite 400
Washington, DC 20005
(202) 326-7300

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TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 1

DISCUSSION. 2

I. The Current Universal Service Support Mechanism Already Works Well And Accomplishes Its Purpose. 2

A. The Joint Board Should Recommend Retention Of The Current Definition Of A Rural Telephone Company. 4

B. The Joint Board Should Recommend Continuation Of Carriers' Right To Have Multiple Study Areas. 5

C. The Joint Board Should Recommend That ILECs Currently Receiving Support Based On Embedded Costs Should Have The Option To Remain On Embedded Costs As The Basis Of Support. 6

II. None Of The Proposals, With Each Proposal Taken In Its Entirety, Would Provide Any Measurable Benefits For High-Cost Universal Service Support, But Could Destabilize The Viability Of High-Cost Carriers And The Vital Networks Over Which They Offer Services. 7

III. The Joint Board Should Not Distract The Commission From Its Important Task Of Addressing Universal Service Contributions. 10

IV. The Joint Board Should Be Cognizant Of The Commission's Review Of Intercarrier Compensation Reform As It Prepares Recommendations On Universal Service High-Cost Support. 11

CONCLUSION 11

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The United States Telecom Association (USTelecom)[1] submits its comments through the undersigned and pursuant to the Federal Communications Commission's (FCC's or Commission's) Public Notice[2] requesting comment on four proposals made by members and staff of the Federal-State Joint Board on Universal Service (Joint Board) regarding issues previously referred to the Joint Board by the Commission on universal service for rural carriers and the basis of support for competitive eligible telecommunications carriers (CETCs). The Joint Board seeks comment on each proposal.

INTRODUCTION AND SUMMARY

USTelecom reiterates here points that it made last year in response to the Joint Board's request for comment – that there is no need to change the current rural universal service support mechanism. Specifically, there is no need to change the definition of a rural telephone company, to require carriers to consolidate multiple study areas, or to move away from an embedded cost support basis for those incumbent local exchange carriers (ILECs) that choose to remain on that

[1] USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

[2] Public Notice, CC Docket No. 96-45, FCC 05J-1, Federal-State Joint Board on Universal Service Seeks Comment on Proposals To Modify the Commission's Rules Relating to High-Cost Universal Service Support (rel. Aug. 17, 2005).

basis of support. USTelecom acknowledges that there are some positive aspects of the four proposals, but stresses that there are many more negative aspects and these dictate against the recommendation of any proposal as a whole. Finally, USTelecom urges the Joint Board not to distract the Commission from its important task of addressing universal service contribution problems by making recommendations to revise the high-cost support system when it already works well. To the extent that the Joint Board does make any recommendations, USTelecom also urges the Joint Board to remain cognizant of the impact that intercarrier compensation reform will have on universal service support.

DISCUSSION

I. The Current Rural Universal Service Support Mechanism Already Works Well And Accomplishes Its Purpose.

USTelecom filed comments and reply comments last year in response to the Joint Board's request for comment on high-cost support for rural carriers.[3] At that time, USTelecom emphasized that there is no need to change the current rural support mechanism because it already works well and accomplishes its purpose to provide support to carriers that serve rural areas, allowing such carriers to offer services that are comparable to those available in urban areas and at rates that are comparable to those available in urban areas.[4] The motivation for making changes to rural high-cost support, particularly those proposed by the Joint Board, is not

[3] *See Federal-State Joint Board on Universal Service*, Comments of the United States Telecom Association, CC Docket No. 96-45 (filed Oct. 15, 2004) and *Federal-State Joint Board on Universal Service*, Reply Comments of the United States Telecom Association, CC Docket No. 96-45 (filed Dec. 14, 2004).

[4] The only change that USTelecom would recommend at this time is removing the cap on high-cost support. Caps on support are contrary to the principle that universal service should be sufficient because when funding must be divided between eligible telecommunications carriers, no carrier can be assured that it will receive sufficient support to build networks and offer services.

clear. Rural ILECs are not receiving more support than necessary. In fact, the amount of support they receive today is absolutely necessary for building, maintaining, expanding and improving their networks, over which they operate as the carriers of last resort, providing basic and advanced services for consumers in their service areas. The broader problems associated with the Universal Service Fund (USF of Fund) are not related to the amount of support that rural ILECs currently receive. Rather, the current problems with the Fund are tied to the inequitable and insufficient contribution methodology.

A number of changes to rural high-cost support considered in the previous round of comments and reply comments to the Joint Board – *i.e.*, whether the Commission should change the statutory definition of rural telephone company, whether the Commission should consolidate multiple study areas operated by a carrier, and whether the Commission should base support on forward-looking economic costs or some other cost methodology – are now integral components of the proposals set forth by the Joint Board. However, the record developed from the previous round of comments and reply comments does not support a further request for comment on proposals that are based on making all or some of the changes that are still under consideration. Because the rural high-cost fund is not broken, USTelecom urges the Joint Board to refrain from making recommendations to change the current definition of a rural telephone company; to consolidate study areas; or to base support on a methodology other than embedded ILEC costs. Making changes such as these could result in a reduction of support to rural ILECs, preventing them from being able to build, maintain, upgrade, and expand their critical networks. In addition, there is nothing to suggest that making these changes would be beneficial to the Fund.

USTelecom continues to urge the Joint Board to recommend that the Commission retain the current definition of a rural telephone company; that carriers be able to continue use of multiple study areas; and that ILECs currently receiving support based on embedded costs should have the option to continue receiving support on that basis.

A. The Joint Board Should Recommend Retention Of The Current Definition Of A Rural Telephone Company.

USTelecom reiterates here points made in its comments and reply comments regarding the question of whether the definition of a rural telephone company should be changed. No changes to the definition of a rural telephone company are needed because the definition already works well and does not pose any problems for distribution of high-cost support. It bears repeating that the need for continuing two sources of support – one for rural carriers and one for non-rural carriers – has already been given much consideration by the Rural Task Force, which concluded that the operational and market distinctions of rural carriers, along with a number of unique circumstances facing them and their customers, necessitated the continued use of the definition of rural as adopted by the Commission.

The only plausible reason to change the definition would be to attempt to reduce the size of the Fund by changing the qualifications for carriers that can receive support. While theoretically possible, changing the definition would have greater public policy risks than any minimal benefit that might be obtained through reductions in the number of carriers supported or the amounts that such carriers receive. Changing the definition with the express intention of reducing the size of the Fund would likely place many carriers at risk of not receiving sufficient support to be able to provide universal service. More specifically, a change in the definition of a rural telephone company would likely cause such companies to suffer a reduction in support because the uniqueness of their operations, customer base, geography, and other business factors will have been ignored and their needs for support will have been homogenized.

There is no overwhelming benefit to be obtained by changing the definition. The Joint Board should recommend continuing the use of the current statutory definition of a rural telephone company.

B. The Joint Board Should Recommend Continuation Of Carriers' Right To Have Multiple Study Areas.

USTelecom reiterates here points made in its comments and reply comments regarding the question of whether rural carriers should be required to consolidate study areas. The use of separate, multiple study areas already works well and does not pose any problems for distribution of high-cost support. USTelecom previously explained that carriers operating multiple study areas generally do so because the areas are not geographically contiguous. As a result of geographic divisions, these carriers usually must establish separate operations for each study area with separate operational expenses. While many of these carriers operate under a larger holding company and may have an overall large number of lines (often equal to that of non-rural carriers), they do not experience the benefits of economies of scale because the geographic divisions necessitate separate operations.

Requiring carriers to consolidate study areas is another misguided attempt to reduce the size of the Fund. Yet, any reduction is likely only to be minimal and overshadowed by a number of unfair results and negative impacts. Most importantly, consolidation would likely cause many companies to receive insufficient support for all of their separate operational expenses. By consolidating study areas a company may appear to be of a size that does not warrant high-cost support[5] or it may appear to benefit from economies of scale that would also not warrant certain high-cost support. However, these appearances are not always accurate representations of the

[5] For example, if consolidation of study areas results in a carrier having over 200,000 lines, the carrier would also receive less support that it would with separate, multiple study areas.

company or its needs for support. The fact is that carriers with multiple study areas do have greater operational expenses than what their consolidated study areas might suggest. Forcing carriers to consolidate study areas is the same as forcing them to accept insufficient support to build networks and provide services. Consolidation is likely to have the unintended, but yet negative impact of discouraging acquisitions of study areas because the acquired study areas would need to be consolidated with the company's existing study area, resulting further in decreased support. The Joint Board should recommend continuing basing support on the use of separate study areas.

C. The Joint Board Should Recommend That ILECs Currently Receiving Support Based On Embedded Costs Should Have The Option To Remain On Embedded Costs As The Basis Of Support.

USTelecom reiterates here points made in its comments regarding the question of whether embedded ILEC costs should continue to be used as the basis of rural high-cost support. There is no need to change the basis of support. The use of ILECs' embedded costs as the basis of support is a time-tested method that has ensured ubiquitous service in rural areas. This basis of support has several advantages: a record of successful performance; ease of administration; investment incentives resulting form stable support; and the use of real world costs. Changing the basis of support to forward-looking costs or some other methodology would require a massive and time-intensive undertaking to analyze and address the cost differences between rural companies and the cost differences between rural companies and non-rural companies. Not only has such an updated analysis not been completed, but USTelecom believes that there is no new data that would support moving to a forward-looking cost methodology for distribution of rural, high-cost universal service support.

Contrary to the advantages of remaining on embedded costs, changing the basis of support to a forward-looking cost methodology is likely to result in many carriers being unable to recover the costs that are actually incurred in building, maintaining, upgrading, and expanding their networks, possibly preventing such carriers from offering the most advanced services or even any service. The Joint Board should recommend the continued use of ILECs' embedded costs as the basis of support.

II. None Of The Proposals, With Each Proposal Taken In Its Entirety, Would Provide Any Measurable Benefits For High-Cost Universal Service Support, But Could Destabilize The Viability Of High-Cost Carriers And The Vital Networks Over Which They Offer Services.

USTelecom opposes Joint Board recommendation of any of the proposals, with each proposal taken in its entirety, that are the subject of this Public Notice. Admittedly, there are some positive aspects captured in the proposals that would benefit the overall universal service program. USTelecom agrees with the concept that there should be a unified (federal and state) system of support, but disagrees with the distribution of such unified support being delegated to the control of the states.[6] Similarly, USTelecom agrees that costs, for purposes of determining universal service support, should be considered on an omnijurisdictional basis, not a separated basis. USTelecom supports the use of rate benchmarks, specifically composite end user rates on a statewide average, above which support would be provided. USTelecom agrees with proposals that include transitions for any changes made to the universal service system. Finally,

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[6] The unification of federal and state universal service funding would obviate the need for state averaging which creates hardships for high-cost study areas or companies which are located in relatively low-cost states. However, USTelecom believes that this unification must take place at the federal level, contrary to the suggestions made in the four plans offered for comment.

USTelecom concurs with the concept that any proposal for consideration should take into account intercarrier compensation reform.

Despite these positive aspects advanced in the proposals put forth by the Joint Board, there are many aspects of the proposals that would likely cause rural carriers to lose support and thereby prevent them from being able to build, maintain, upgrade, and expand their networks, ultimately resulting in less advanced or even no services to consumers in rural areas. Although this list is not exhaustive of the problems with the proposals, it is representative of the important reasons why none of them should be recommended in their entirety.

- No plan to revise high-cost support should include provisions to move rural ILECs to models as the basis for recovering universal service support. Rural carriers have unique operational expenses (e.g., extreme geographical hindrances) that do not lend themselves to the use of models.
- As discussed above, carriers should not be forced to consolidate multiple study areas.
- There should be no freeze of per line support upon competitive entry; freezes are inconsistent with the requirements in the Telecommunications Act of 1996 (1996 Act) that there should be specific, predictable, and sufficient support to preserve and advance universal service. By its very nature, a freeze denies support based on need. If support is not based on need and does not meet a carrier's need, then it is insufficient.
- No plan to revise high-cost support should include block grants of support to states for distribution to carriers. Distribution of support through block grants to states would foster unpredictability in the system because 50 different states would be deciding how to disburse support with variations in such determinations across the states. This would also be administratively burdensome for small carriers because in order for support to be

distributed by a state, the state would likely require carriers to submit to evaluations that are similar to rate cases, which are time-consuming, labor intensive, and generally burdensome.

- There should be no cap on the Fund.[7] Similar to the problem with implementing a freeze, caps on the Fund are inconsistent with the requirements in the 1996 Act that there should be specific, predictable, and sufficient support to preserve and advance universal service.
- Compliance with any changes made to the universal service system should not be voluntary by state. The universal service program must be uniform and administered by the Federal Communications Commission, not more than 50 separate state and territorial commissions.
- The Commission should not create a separate, capped universal service fund for mobile carriers. Creating separate funds such as this would unnecessarily divide the total amount of support with the resulting possibility that necessary support for wireline networks may not be available. The lack of available support would be further emphasized if wireless carriers were not fully drawing on the separate wireless funds. Similarly, creating a wireless support fund could lead to the creation of additional specialty support funds, further dividing the total amount of support available and limiting the ability of carriers to obtain sufficient support to build, maintain, upgrade, and expand networks as necessary for their customer demand. The creation of separate funds may also lead to the development of separate funding mechanisms, which would further narrow the base of

[7] As noted previously, the current cap on the Fund should be removed as contrary to the principle that universal service support should be sufficient.

support and which could lead to other problems such as determining which funds should be used to support certain services as carriers' services converge.

III. The Joint Board Should Not Distract The Commission From Its Important Task Of Addressing Universal Service Contributions.

Chairman Martin succinctly summed up the problems facing universal service today in remarks made at the National Association of Regulatory Utility Commissioners summer meeting in July this year. He stated, "The universal service mechanism is breaking. The method for carriers to contribute into the fund is outdated. It doesn't adequately account for the increase in bundled service offerings, the migration to wireless and VoIP services, and the shrinking long distance market. Similarly, the way that the funds are distributed is fraught with complexity. These problems that exist with the universal service fund are far reaching, affecting several industries – wireline, wireless, and cable."[8] It is clear that the Chairman has identified universal service contributions as a significant problem requiring resolution in the near term. In fact, in his comments on the adoption of the wireline broadband Internet access order, Chairman Martin established a short timeframe for resolution of the contribution methodology.[9] The Joint Board should take its cue from the Chairman – that is, it should not shift the focus from the critical contribution problems facing universal service (and the associated problems of ensuring that

[8] Remarks by Chairman Kevin J. Martin, Federal Communications Commission, to the NARUC Summer Meeting, Austin, Texas (July 26, 2005).

[9] *See* Chairman Kevin J. Martin's Comments on Adoption of Wireline Broadband Internet Access Order (Aug. 5, 2005). Specifically, Chairman Martin stated, "We must ensure the stability of the fund. Accordingly, we require telephone companies to continue contributing to the universal service fund on their Internet access services based on their current contribution levels for 9 months following the effective date of the Order or until we adopt new contribution rules, whichever comes first." *Id.*

support is properly distributed to qualified entities) to an area such as revision of high-cost support where there is no need for change.

IV. The Joint Board Should Be Cognizant Of The Commission's Review Of Intercarrier Compensation Reform As It Prepares Recommendations On Universal Service High-Cost Support.

ILECs serving high-cost areas have been able to do so because they have had three sources of revenue – from end users, intercarrier compensation, and universal service support – for meeting their revenue requirements. Because these three revenue streams have been so critical to the ability of high-cost ILECs to build networks and provide services, it should be clear that any changes in high-cost universal service support must take into consideration pending reform of the intercarrier compensation system. More specifically, any recommendations by the Joint Board on changes to high-cost support should not be made in a vacuum. While the Commission has begun its review of intercarrier compensation reform, there is still much work ahead of the Commission and the Joint Board must weigh the timing of intercarrier compensation reform with its consideration of the need for revision to high-cost universal service support. Again, USTelecom maintains that no changes to high-cost support are currently needed, but to the extent that the Joint Board makes recommendations for changes, they should be made with an understanding of and in tandem with the direction of intercarrier compensation reform.

CONCLUSION

For the reasons elaborated upon above, USTelecom urges the Joint Board to refrain from making recommendations to change the current rural, high-cost universal service support mechanism.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: Robin E. Tuttle

James W. Olson
Indra Sehdev Chalk
Jeffrey S. Lanning
Robin E. Tuttle

Its Attorneys

607 14th Street, NW, Suite 400
Washington, DC 20005
(202) 326-7300

September 30, 2005

CERTIFICATE OF SERVICE

I, Robin E. Tuttle, do certify that on September 30, 2005, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to the following:

BCPI
Portals II
445 12th Street, SW
CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Sheryl Todd
Federal Communications Commission
Wireline Competition Bureau
Telecommunications Access Policy Division
445 12th Street, SW
Room 5-B540
Washington, DC 20554
Sheryl.todd@fcc.gov

By: Robin E. Tuttle
Robin E. Tuttle